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Connecticut Superior Court, Judicial District of Danbury Regional Family Trial Docket at Danbury.

SMITH V. SMITH, NO. FA 01-0341470 S (JUL. 15, 2003)

2003 Ct. Sup. 8413-be (Conn. Super. Ct. 2003)

The Bonfire of Denigration

(A Borderline Divorce with Parental Alienation)

Divorcing a Borderline in Connecticut results in total destruction of your Job, Career, Reputation, Credit, Retirement Savings, Health, Property, relationship with your children (Parental Alienation) and includes incarceration.

This case is an example of what happens when Judges have no understanding of borderline personality disorder and participate with them in a borderline campaign of denigration resulting in parental alienation syndrome.

Highlights:
On Page 10, the defendant: Ms. Smith as a guarded and defensive woman, who displayed evidence of a mixed personality disorder with histrionic, **borderline**, obsessive-compulsive, and **narcissistic** features.

On page 15: Mr. Smith was unable to explain why his contract with Aquila would make a reference to Mutual Fund Timing Arbitrage if it is no longer profitable. The court founds **mutual fund timing** a source of narcissistic supplies for alimony.

Despite above, on page 19, the court finds that: The Plaintiff denied that he held money in off-shore accounts despite the evidence above. **The court believes borderline campaign of denigrations alleging that fathers in Connecticut have offshore accounts.**

then on page 20: the court orders: The plaintiff father's **visitation shall not include any friends of the father** unrelated to the minor child until further order of the Court. The court is ordering that fathers can only **BE ALONE** with their children.

DAVID R. SMITH v. DYANE W. SMITH.

No. FA 01-0341470 S

Connecticut Superior Court, Judicial District of Danbury Regional Family Trial Docket at Danbury.

July 15, 2003

MEMORANDUM OF DECISION

ABERY-WETSTONE, JUDGE.

HISTORY

This matter was tried before the Regional Family Trial Docket, on a referral from the Danbury Judicial District, over a period of seventeen days between April 28 and May 22, 2003. The plaintiff and defendant testified and numerous exhibits were introduced. The court has considered all of the credible evidence presented and carefully considered the respective criteria for orders of child support, health insurance, payment of children's medical expenses, alimony, property settlement, division of debt and award of counsel fees. The court makes the following findings of facts and orders:

The parties were married on October 11, 1991, in New York, NY. The court finds that it has jurisdiction over the marriage. One of the parties has lived in the State of Connecticut for more than one year prior to bringing this action. The following minor child has been born to the parties since the date of the marriage:

Taylor Leland Smith: date of birth, March 28, 1992.

No other minor children have been born to the wife since the date of the marriage. The parties are not receiving state assistance. The court finds that the marriage between the parties has broken down irretrievably and that there is no reasonable prospect of reconciliation.

Visitation between the father and son was modified over the course of the divorce by court order. Prior to the entry of the initial pendente lite orders, Mr. Smith claimed his wife used visitation as a ploy to reconcile with him. On April 25, 2001, the court-ordered psychological evaluations of the parents and child, ordered counseling for the child, and appointed Dr. Robert Colen, Ph.D., to complete the evaluations. Pendente lite custody and visitation orders entered on April 30, 2001 by CT Page 8413-bf stipulation of the parties. Visitation was scheduled every Saturday from 9:00 a.m. to 5:00 p.m. and one weeknight every week.

The court modified the visitation orders on August 1, 2001, increasing the husband's parenting time to alternating weekends from Thursday afternoons to Sunday evenings, as well as Mondays and Thursdays for dinner. These visits took place in the husband's basement apartment in Ridgefield and his sublet in New York City. Beginning in March 2002, the weekend visits were extended to Monday morning.

In August 2001, the wife filed a Motion for Contempt alleging that the husband had failed to maintain the household bills and that the electricity service had

been turned off. On September 25, 2001, after a hearing, the court modified the financial orders, ordering the husband to pay $2,500 per week as unallocated alimony and support.

The parties filed various motions for contempt against each other in October of 2001. On November 26, 2002, Dr. Colen was ordered to update his psychological evaluations. On January 17, 2002, the case was referred to Family Relations for a custody evaluation, On February 11, 2002, the court ordered that a mental health professional be appointed as the guardian ad litem (GAL); the parties subsequently agreed that Donald Cohen, Ph.D. would serve as the GAL. On May 5, 2002, pursuant to a stipulation, the court found that the husband owed $7,000 for unallocated support as of May 3, 2002. Ms. Smith deferred $1000 of the child support arrearage and agreed that it would be considered part of her retainer for the GAL. The court established a standing order for Mr. Smith to appear in court on Mondays if he failed to make his $2500 support payment the previous Friday.

On May 28, 2002, Mr. Smith was found in contempt of court and a capias was to be issued unless Mr. Smith appeared in court May 29, 2002. On May 29, 2002, the court ordered Mr. Smith to make a wire transfer of $2,500 by 5:00 p.m.

On July 17, 2002, the court modified the visitation arrangements, ordering visitation on alternate Fridays from 6:00 p.m. through Sunday at 9:00 p.m., alternate Mondays from 6:00 p.m. to 9:00 p.m., and every Thursday from 6:00 p.m. to 9:00 p.m. The father was prohibited from having any third parties present at the visitation and overnight visitation was permitted in New York City only. The Monday and Thursday visits were to occur in the basement of the family home.

On July 22, 2002, the court issued a capias for the husband's arrest for failure to pay court-ordered support. On August 12, 2002, the court CT Page 8413-bg ordered a wage execution on the husband's salary. Mr. Smith was arrested in October 2002 and his girlfriend, Ms. Cathy Prior, posted his bond of $2,500. On October 7, 2002, Mr. Smith appeared in court, was found in willful contempt of the financial orders and ordered incarcerated until he paid $17,725.27 past due support and counsel fees. On October 21, 2002, Mr. Smith was released and ordered to return to court on November 18, 2002.

Mr. Smith's last payment of support was the result of a Motion for Contempt; the payment was made by a withdrawal from his 401K in January 2003.

FACTS

Mr. Smith is 45 years old and in good health. He graduated from the University of Cincinnati in 1979 with a degree in Music. He plays piano, organ and harpsichord. He received his MBA in Finance from NYU's Stern School of Business in 1990. Mr. Smith worked on his parent's farm in Ohio from 1979-80. In 1981, he became employed by REVOC, a New York City commodities-trading firm. He was employed in Minneapolis, MN from 1987 to 1989 and returned to New York City to obtain his MBA. The couple moved to the marital home in Redding Connecticut in 1993.

This is the second marriage for both parties. Dyane Smith was married to Richard Ancas from 1981-88; no children were born of the marriage. Mr. Smith was married to Maria Danzilo from 1985 to 1991; no children were produced from that marriage.

At the time of the trial, Mr. Smith was unemployed, having been terminated from his job with Bayerische Landesbank Girozent (Bavarian State Bank) on October 31, 2002. Mr. Smith testified that his employment was terminated as a result of both his incarceration for failure to pay child support and for missed work for the numerous court appearances required prior to his incarceration. Mr. Smith received severance pay equal to his salary until the end of January 2003. At the time of trial, Mr. Smith had paid no support since January

2003. He admitted that he had collected $405.00 per week unemployment compensation. He also admitted to taking a European vacation (Germany, Austria and Chekeslavia) with Ms. Prior in February 2003. Mr. Smith admitted that Ms. Prior was paying his living expenses. Additionally Mr. Smith testified that he made contributions to Ms. Prior's expenses.

Mr. Smith testified that his salary at Bayerische Landesbank Girozent was $134,000 per year. He complained that the pendente lite unallocated support order of $2,500 per week exceeded his income. These claims were CT Page 8413-bh litigated twice during the pendente lite period and each time the court upheld the $2,500 weekly payments. Additionally, Mr. Smith's 2002 Form W-2 indicated his income was $154,979.66 (Plaintiff's Ex. 60).

Mr. Smith estimated that his daily commute to New York City from the family home in Redding, CT took approximately one hour and forty minutes one-way.

In addition to his employment with Bayerische Landesbank Girozent, Mr. Smith admitted that he operated his own business, TradeSmith, since 1998. Initially, TradeSmith was operated as a sole proprietorship; it became a LLC in 2000. TradeSmith was formed to trade US and foreign mutual funds for himself and his clients. Mr. Smith testified that he worked for TradeSmith clients during his commute, as well as during and after the hours he was employed by Bayerische Landesbank Girozent. Bayerische Landesbank Girozent was not aware that Mr. Smith was trading for his own clients during his workday. Mr. Smith also formed another company called IronSmith, with the intention of creating a hedge fund. Mr. Smith stated that he had hoped his income from these two com- panies would grow so that he could quit his job with Bayerische Landesbank Girozent and concentrate on his own business. He claimed to have earned $5,000.00 from TradeSmith in 2002, despite reporting significantly higher sums in previous years.

Mr. Smith initially testified at trial that he was going to begin working for Aquila Asset Management, LLC, a hedge fund business in New York City, commencing June 1, 2003. He also claimed that he would not be compensated for his first three months of employment and thereafter was vague about how he would be paid except that his base salary would be $100,000.00 per year if his performance merited such, contingent upon a three-month trial trading period. Prior to and during the trial, the defendant's attorney sought information regarding specific details of Mr. Smith's compensation but the plaintiff failed to produce any documents. During the trial, the court ordered Mr. Smith to produce all information relating to his compensation from Aquila Asset Management, LLC. It required three days and the threat of incarceration before the plaintiff produced an employment contract containing all the terms of his employment (Plaintiff's Exhibits 107, 108 and 109). Exhibit 109 indicates that Mr. Smith's "trial period" would begin May 1, 2003 (not June 1, 2003 as he initially testified). As of May 1, 2003, Mr. Smith would be paid twenty (20)% of his net trading profits and twenty (20)% of the General Partners' net earnings, based on investors introduced to the partnership as a result of his efforts. He would receive no salary during the trial period. However, after successfully completing the trial period, he would be paid $8,333 per month beginning on August 1, 2003. CT Page 8413-bi

The court finds that Mr. Smith has an earning capacity in excess of $125,000 based on his seven and a half years of employment with Bayerische Landesbank Giroz, his testimony regarding his earnings from TradeSmith, LLC from 1998-02, and his current job offer with Aquila.

Mr. Smith did not know initially whether Aquila would offer him health insurance. He testified that another trader employed by Aquila purchased medical insurance through a clearinghouse but the plaintiff had little information about the availability of medical insurance for himself and Taylor beyond the eighteen

months of COBRA benefits from Bayerische Landesbank Giroz. Ms. Smith has no access to health insurance for Taylor because she is self employed.

Ms. Smith is 50 years old and in excellent health. Ms. Smith received a BFA in Art History from the Indiana University of Pennsylvania in 1975. She was employed by the Metropolitan Museum of Art installing exhibitions. She received her MBA from NYU, Stern School of Finance, and worked as a proxy solicitor for Peat Marwick until her move to Connecticut in 1993.

Mr. and Ms. Smith met while they were both attending NYU. They dated for one and a half years before they married. The marriage was the result of Ms. Smith's pregnancy. The family home in Redding is the only home the couple's son has known. Taylor attended Landmark Academy for preschool, briefly attended public elementary school in Redding, and has attended Ridgefield Academy since the third grade. Ms. Smith would like Taylor to remain at Ridgefield Academy until the eighth grade and Mr. Smith (if granted sole custody) would like Taylor to attend public school in Ridgefield. Ms. Smith applied for financial aid for the upcoming school year but her application was incomplete because Mr. Smith had not filed his tax returns.

Taylor began therapy with Gerald M. Arndt, Ed.D., in 1998, when he was pushed, or fell, into a glass table when with his father. Taylor has seen Dr. Arndt, off and on, over the years with both of his parents. In the past year and a half he has seen Dr. Arndt alone. A pendente lite court order required Mr. Smith to pay half of the $4,000 balance due Dr. Arndt. Ms. Smith has paid for Taylor's appointments on a pay-as-you-go basis and at the same time made payments towards the outstanding balance. Despite a court order, Mr. Smith has made no effort to pay his share of Dr. Arndt's bill. Ms. Smith claims he cashed a $900.00 insurance reimbursement check for the portion of Dr. Arndt's services covered by insurance. CT Page 8413-bj

Ms. Smith has been employed as an associate for Capstone Mortgage Company since approximately November 2001. Her job entails soliciting clients for new mortgages and refinancing existing mortgages. Ms. Smith had no experience in the mortgage/refinancing field; all of her training has been on the job. She is paid strictly on a commission basis and has no health insurance or retirement benefits. Ms. Smith testified that she took the job because it offered her flexible hours that enabled her to pick Taylor up after school and be available if he is ill. It was clear to the court that Ms. Smith has been the parent primarily responsible for raising Taylor since his birth.

During the course of the three-week trial, Ms. Smith was not at work and anticipated that her income would suffer since she would be unable to make cold calls to people for refinancing their mortgages.

Ms. Smith testified that she and Taylor attend the Congregational Church, where she has taught Sunday school for five years. She has also been involved in the Ladies Luncheon Club and the Cross Highway Club at the church.

Ms. Smith kept a record of father/son visitation commencing with Judge White's orders of July 17, 2002 (Defendant's Exhibit D-N). In addition to having no visitation from July 17 — October 24, 2002, Mr. Smith missed a number of other visits with his son. On 11/4/02, the father was scheduled to pick Taylor up at the Wilton YMCA at 6:30 p.m. Taylor waited until 7:15 p.m. and then called his mother in tears. On 11/7/02, Mr. Smith was again supposed to pick Taylor up at the Wilton YMCA and failed to appear. Other missed or canceled visits include 11/18/02, 11/9/02, 11/10/02 and 11/18/02. On 11/22/02, Mr. Smith appeared one hour late for a swim meet. On 11/24/02 and 11/29/02, Mr. Smith arrived for the visits but had arguments with his son and left without visiting. On 12/8/02, the father notified Taylor that he wasn't coming to visit. On 12/20/02, Mr. Smith arrived forty-five minutes late for his visit, leaving Taylor waiting at the

YMCA. The plaintiff also canceled his visits with Taylor on 12/26/02 and 12/30/02. In February 2003, Mr. Smith and Ms. Prior went on a European vacation and Taylor was not told where his father was or why he was not visiting him. Ms. Smith reported that Taylor was upset because he didn't know whether or not he would be visiting with his father.

The couple initially separated, and the husband began divorce proceedings, in July 1999. They reconciled in late December 1999. The husband began the instant action in January 2001. Despite having filed for divorce, the couple and their son took a family vacation to India in March 2001. Defendant's Exhibit E-C is a photograph, taken by their son, CT Page 8413-bk of the couple kissing in India. In addition to filing for divorce twice, Mr. and Ms. Smith agreed there were additional separations during the marriage but were unable to agree on the number of separations.

The marriage was doomed to fail from the start. The wife testified that the couple was intimate less than ten times during the marriage and on most occasions the couple did not sleep in the same bedroom. Ms. Smith explained this lack of intimacy, in part, as the plaintiff's following of *The Teachings of Kirpal Singh*, (Defendants Exhibit E-E.) This book's teachings are rather unusual and tended to restrict the couple's sexual intimacy.

Mr. Smith had a series of affairs during the marriage. The first woman Ms. Smith was aware of was Jamie Jo Johnson; that relationship began in April 1999 and ended in May 2001. Ms. Smith testified that her husband admitted to the affair two days after his birthday in February 2000. Mr. Smith was also intimate with Jamie Mosedale, Ester Bedard and Cathy Prior.

Mr. Smith claimed that his wife was angry because she became pregnant before the marriage and he waited for four months to marry her. During the divorce, Mr. Smith also compiled a list of what he considered were his wife's negative attributes. (See Exhibit DW.)

Mr. Smith testified that he is seeking sole custody because his wife has alienated Taylor from him, claiming the child was suffering from Parental Alienation Syndrome as first described by Richard Gardner.

Mr. Smith described a variety of activities and trips he took with Taylor. The reoccurring theme of the father's visits with his son was that time was spent with other people rather than just his son. Mr. Smith described a trip to Cape Cod to celebrate Taylor's birthday with Ms. Prior (father's current girlfriend), Kerry, Ms. Prior's daughter, Kerry's boyfriend, a male friend of the father's, Sean, and his son, Bo. This trip included a visit to a casino that Taylor did not enjoy. Additionally, father and son trips were made to Ohio to visit Mr. Smith's extended family and to Saratoga, N.Y. where Ms. Prior also owns a vacation home. Weekend visitation also frequently included third parties, including a trip to the Metropolitan Opera in early 2002 (attended by Ms. Prior), Taylor's piano recital (also attended by Ms. Prior), and a visit to the Ethical Culture Society in NYC where Mr. Smith left Taylor in a class to learn about the Muslim religion. When Mr. Smith and Ms. Prior had a landlord/tenant relationship, she frequently purchased lunch for them on Saturdays because Mr. Smith failed to prepare for his son's visit and have food available. CT Page 8413-bl

Taylor objected to third parties being included in visitation plans with his father and in July 2002 the court ordered that no third parties be included in father/son visitation plans. Immediately after the court order, the father failed to exercise his visitation from July 18, 2002 until November 4, 2002. Mr. Smith never offered any explanation to Taylor for his abrupt disappearance from his life.

After October 2002, Mr. Smith moved in with Ms. Prior and thereafter did not maintain his own residence. Overnight visitation was terminated due to the prohibition of third parties during father/son time. Mr. Smith and Taylor used the partially finished base-

ment of the Redding family home for their visits if Taylor had homework to complete. If Taylor had no homework, father and son would go out to dinner on weeknights. There was testimony from both Mr. and Ms. Smith that the husband was late in picking Taylor up at the Wilton YMCA on more than one occasion. The child made tearful telephone calls to the other adults in his life because he was upset and frightened that his father failed to pick him up at the scheduled time and place.

Mr. Smith was unhappy with the ban on third parties during his visitation with Taylor. He deemed it unnatural, bizarre, inconvenient, and claimed it dissipated his relationship with his son by the lack of flexibility and its inconvenience. Mr. Smith cited many examples of Ms. Prior's parenting skills and her background as an educator and therapist. The court would note that Mr. Smith has had multiple relationships with other women before, during and after the couple's separations. It was abundantly clear to the court that Mr. Smith regularly relied on other people to help him carry out his parenting responsibilities.

During his testimony, Mr. Smith spoke at length about how he would parent his son with Ms. Prior's help but made little comment about including Ms. Smith in their son's life. When he was asked who would be available to pick Taylor up after school if he had to work, the father spoke of Ms. Prior, her daughter and an unnamed network of friends. He never mentioned that if he were not available it would be in his son's best interest for his mother to pick him up. Mr. Smith's attitude was that Ms. Prior was an agreeable and reasonable person and that his wife would have to "play ball and cooperate" with her in parenting Taylor.

Additionally, Mr. Smith's testimony was markedly different from Ms. Prior's regarding their future marriage plans. Given Mr. Smith's history of unstable relationships with women, the court cannot rely on Ms. Prior's continued presence in the father's or the son's life. At the time CT Page 8413-bm of trial, Mr. Smith was unemployed and Ms. Prior was providing his food, clothing and shelter. If this relationship does not last, Mr. Smith will be homeless. She is not "officially" engaged to Mr. Smith and her expectations of marriage appear to be at odds with Mr. Smith's testimony. The court would be engaging in pure speculation if it relied on Ms. Prior's assistance in the parenting of Taylor in making a custody decision.

Currently the father and son arrange their next visitation at the end of each visit. Mr. Smith complained that he receives infrequent telephone calls from Taylor and it is often a mystery to him if he is supposed to feed Taylor dinner during his visit. The father feels that his relationship with his son has been difficult since he vacated the family home. He claims that the mother has alienated the child from him because the child speaks to him in adult terms — accusing him of committing adultery, making the "wrong" choice, talking about court orders, and telling him he needs to get a job. Mr. Smith testified that Taylor mimics his mother's language when he talks of adultery. Statements, by Taylor, cited by the father are: "Mom's not your secretary," "I'm going to make your life a living hell," "it will take two and a half years to get a divorce," and other similar statements. It was clear to the court that Mr. Smith has exposed Taylor to a number of girlfriends during this and the previous separation. Taylor knows all too much about his father's relationships with Jamie Jo Johnson (the mother of a child attending Taylor's school), Jamie Mosley, Ester Bedard (the mother of one of Taylor's friends) and Cathy Prior. It was also clear to the court that Taylor harbored a strong fantasy to see his parents reunite. This has been encouraged by the couple's reconciliation after the 1992 divorce and the family trip to India after the present action was filed.

It is clear to the court that the father's behavior is the cause of any alienation from his son and that Mr. Smith accepts absolutely no responsibility for his own actions. In a letter given to his attorney (AMC Exhibit

1), Taylor implores the Attorney for the Minor Child (AMC), Susan Poll, to tell the court what he wants for visitation with his father and offers mature and thoughtful explanations for his requests. Taylor states on page two of AMC Exhibit 1, "(w]hen I am with my father at anytime I want no girlfriends or any of their family [Example — I do not want Cathy with my Dad and me, I do not want him to talk to Cathy on the cellular phone or share his experiences or stories with her]." Taylor makes it abundantly clear that he wants to spend one-on-one time with his father rather than with a surrogate mother or with a crowd of people. The fact that Taylor wants to be the center of his father's attention makes it clear to the court that this child has not been alienated. Taylor is literally begging his father for quality time and CT Page 8413-bn father's response is that it is not convenient for him or that he should not be forced to choose between his girlfriend and his son. Taylor comments in AMC Exhibit 1 that he is afraid of his father and that his father often laughs inappropriately. The court frequently noted this behavior during Mr. Smith's testimony. During his testimony, Mr. Smith demonstrated impaired memory, distracted responses to questions, and an alarming inability to focus and answer questions directly. The responses from Mr. Smith were so unfocused that the court was compelled to ask Mr. Smith if he was taking any medication that would impair his ability to testify. Mr. Smith denied that he was taking any medication that would impair his ability to testify. His style of testimony was consistent throughout the entire seventeen-day trial.

Despite his request for sole custody, Mr. Smith did not know the names of all of Taylor's teachers, his best friends, his dentist, or his pediatrician. Mr. Smith planned to change his son's religion (for no reason that was clear to the court), school, and therapist. The father proposed that he and Taylor would live with Ms. Prior. He further proposed that Ms. Prior, her daughter, or his unnamed network of friends could pick Taylor up from school and take him to after-school activities. He also proposed that Taylor play in a graveyard by Ms. Prior's home. Additionally, at one point during the custody evaluation, Mr. Smith proposed that with the aid of Ms. Prior, his son could attend boarding school.

Mr. Smith testified that he was a "student of comparative religions" including Christianity, Buddhism and the Sikh faith. He initially proposed that Taylor be exposed to a variety of religions so that he could select the one he felt most comfortable with. Later, he testified that despite the fact that Taylor has attended the Redding Congregational Church, he would attend the Methodist Church in Ridgefield if he were awarded sole custody. Mr. Smith offered the court no explanation or logic for changing from the Congregational Church to the Methodist Church. Mr. Smith offered garbled testimony regarding his post-separation participation in Taylor's religious upbringing. He initially testified he would ask Taylor (age eight at the beginning of 2001) if he wanted to attend church on Sunday. If the child said no, they did not attend. When asked if it was appropriate to allow an eight-year old child to decide whether to attend church, Mr. Smith finally acknowledged that it was probably not appropriate to allow even a ten-to eleven-year old child decide if he should attend church. The father also acknowledged that it took the intervention of the GAL to have Taylor make his First Communion because it was "his" weekend.

Mr. Smith testified that he has a spiritual teacher, Rajinder Singh. He CT Page 8413-bo keeps photographs of him in his home and car. (Defendant's Exhibit B-Y.) Mr. Smith said that when offered the opportunity to meditate with Rajinder Singh, Taylor did so on several occasions.

A number of accidents occurred when Mr. Smith was supposed to be caring for Taylor. On one occasion when Taylor was five years old, he and his father had to be assisted down a mountain by the ski patrol because they were on a ski slope too advanced for them. When Taylor was six years old, his father lost him

in the New York City FAO Schwartz for an hour or more during the holiday shopping season. Mr. Smith allowed Taylor to parasail at the age of seven in the Grand Caymans with a harness too large for a child. Mr. Smith brushed off these incidents by stating that his wife was overprotective and paranoid, which he viewed as a precursor to PAS (Parental Alienation Syndrome). In essence, Mr. Smith demonstrated to the court that he had no experience or skills in the areas of childcare, child development or child psychology.

If Mr. Smith were to be awarded custody of Taylor, he would change nearly every aspect of this child's life and undermine any semblance of stability, identity and security the child currently has. Mr. Smith brushed off any concerns about the radical changes he was proposing by stating that his son was "resilient" and would get used to it, The statement that Taylor was "resilient" demonstrated to the court that Mr. Smith lacked the capacity to empathize with the drastic life alterations he would be imposing on his child. Essentially, all of the changes in Taylor's life proposed by Mr. Smith, would directly or indirectly benefit Mr. Smith, not Taylor: public school would save Mr. Smith tuition bills; sole custody in favor of the plaintiff would eliminate the payment of child support; sale of the family home would put cash in his pockets and pay off his creditors; and replacing Taylor's therapist would give the father the opportunity to choose someone sympathetic to his own views.

Mr. Smith claimed that his wife was disclosing financial information to Taylor inappropriately. However, given Mr. Smith's frequent failure to pay support in a timely manner, it was inevitable that the child would experience significant economic changes and worry about his future. Ms. Smith testified that as a result of finances, the family diet changed radically after the couple's separation. The court finds the wife's testimony credible and finds that this change would have been obvious to the child.

During the couple's pendente lite separation, Mr. Smith lived in six different residences, including:

1. 43 North Salem Road, Ridgefield, CT; CT Page 8413-bp

2. 84 North Salem Road, Ridgefield, CT (Ms: Prior's basement apartment);

3. 230 East 52nd Street, Manhattan, NY;

4. With a friend, Justin, on the lower East Side of NYC;

5. 50th Street, NYC; and

6. 84 North Salem Road, Ridgefield, CT (cohabiting upstairs with Ms. Prior).

Leslie Raider was the Family Relations Counselor assigned to conduct the custody evaluation. The report she produced is complete, insightful and comprehensive. Ms. Raider noted that father and son had a gap in contact from July 2002 to November 2002 that delayed the completion of the report. She also noted that Taylor had a factual basis for feeling his father was unreliable. She cited several examples: on one occasion, Mr. Smith dropped Taylor off at a swim meet just as it was ending and Taylor had no ride home; Taylor stated that his father not wanting him to participate in Boy Scouts was the reason he dropped the activity; on a father/son bike ride, Mr. Smith stopped without telling Taylor and the child suddenly realized his father was not in sight. Ms. Raider felt that Taylor's comments had a basis in truth though they might be slightly exaggerated. Ms. Raider acknowledged that the Smith report was one of the longest she had written in her tenure with Family Relations.

Ms. Raider testified that the mother sought mental health treatment during the course of the divorce and had successfully addressed her emotional issues. She noted that Mr. Smith had failed to address his own mental health issues. Ms. Raider noted that Mr. Smith needed to establish a relationship with his son that

included a sense of security and stability before he introduced a third person into the mix. Ms. Raider expressed concern that Mr. Smith would not follow through with her proposed access schedule. When he was displeased with the July 2002 change in visitation he did not see his son for several months. During this gap in visitation the plaintiff failed to consider the impact of his vanishing act on his son.

Ms. Raider felt that the actions of both the husband and wife and the years of marital conflict had an impact on Mr. Smith's relationship with his son. However, Mr. Smith failed to take responsibility for his actions, was more intent on blaming his wife, and failed to apologize to his son for the period of no contact and for being late or missing CT Page 8413-bq visits.

Ms. Raider recommended sole custody to the mother and visitation for the father on alternate Saturdays from 10:00 a.m. to 6:00 p.m. and on alternate Sundays from noon to 6:00 p.m. She proposed Mr. Smith's weekday access to be one weekday afternoon or evening for two hours of counseling with Taylor. Ms. Raider recommended that the time spent by father and son include no third parties and if father attended school functions, recitals or sports events he be unaccompanied. Ms. Raider did not recommend that Taylor's therapist be changed. Taylor is comfortable with Dr. Arndt and they have worked together for several years. (At one point during the trial, Mr. Smith proposed that Dr. Richard Gardner, who coined the term Parental Alienation Syndrome, be Taylor's therapist.) Ms. Raider did not believe Mr. Smith was an active parent when the marriage was intact and expressed concern for the multiple moves the father had made during the separation. Taylor's concerns, as expressed to the Family Relations Counselor, included whether he would continue attending Ridgefield Academy, and whether he would remain in the family home and keep his pets. Ms. Raider warned that Taylor would remember with disappointment if the father did not take his parenting access time she had proposed.

Robert Colen, Ph.D., conducted court-ordered psychological evaluations of the parents and child. The first evaluations were completed in July 2001. (Plaintiff's Exhibit 27 A.) The psychological evaluations were updated in March 2002. (Plaintiff's Exhibit 27B.) In his initial report, Dr. Colen acknowledged that Mr. Smith "at times will show exaggerated aggressive behavior with little apparent provocation" (Plaintiff's Exhibit 27A, p. 5).

Dr. Colen completely discounted Mrs. Smith's allegations of domestic violence as exaggeration but failed to look for any evidence that corroborated her claims. The Family Relations Counselor, Ms. Raider, did seek verification of the mother's claims of domestic violence and gained access to doctors and hospital records that verified Ms. Smith's complaints.

Dr. Colen's first report and testimony portrayed Ms. Smith as a guarded and defensive woman, who displayed evidence of a mixed personality disorder with histrionic, borderline, obsessive-compulsive, and narcissistic features. Dr. Colen drew a more positive picture of Mr. Smith, characterizing him as hard working, self-assured, persevering, dependable and trustworthy. (Plaintiff's Exhibit 27A, p. 5.) Dr. Colen's diagnostic impression of Mr. Smith included personality disorder not otherwise specified, with passive-dependant, passive-aggressive CT Page 8413-br features. The first report concludes that

[w]hile Mr. Smith can appear somewhat withdrawn, preoccupied and distracted, his reality testing was intact and there was no evidence of cognitive distortions in either the clinical interviews or formal testing. He was seen as a loving father who wants to remain involved in Taylor's life. While he may at times show some insensitivity in his comments and jesting with Taylor, he does seem capable of exercising good judgment and responsible childcare. Since Mr. Smith had apparently been disempowered in his parenting role over the many years of the marriage, he will need time alone with Taylor to further the father-son bond. It

is thus recommended that Mr. Smith have increased time with Taylor despite Taylor's resistance to such contact . . . This examiner further recommends continued psychotherapy for Mr. Smith since he seems to be profiting from his treatment.

(Plaintiff's Exhibit 27A, p. 7.)

Dr. Colen's second report cites several lapses of parental judgment on Mr. Smith's part but writes them off as due to the high stress Mr. Smith was under due to the divorce. (Plaintiff's Exhibit 27B, p. 4.) The report concludes on page seven, "David Smith presented as extremely stressed, preoccupied, and overwhelmed with his situation . . . he was bitter and resentful of the court's decision regarding child support/alimony and expressed grave fears about his depleted financial situation. He did appear more unbalanced than he has previously and at times displayed loose thinking. His judgment seemed compromised due to his high level of stress and preoccupation with his situation." (Exhibit 27B, p. 7.) Dr. Colen recommends regular face-to-face psychotherapy and a referral for a medication evaluation. (Plaintiff's Exhibit 27B, p. 7.)

At the time of trial, Mr. Smith had failed to follow either recommendation. He met with a therapist in NYC on one occasion but did not return due to the cost and met with Ms. Prior's religious counselor on one occasion. During the trial, Mr. Smith admitted being prescribed an anti-anxiety medication by his primary care doctor that he could take on an as-needed basis. He testified that he was not taking the medication every day during his trial testimony and that it did not impair his ability to testify.

Dr. Colen's first psychological report recommended that Ms. Smith seek regular psychotherapy along with a psychiatric consultation to explore the use of medications. (Exhibit 27A, p. 7.) In his second report, Dr. Colen found Ms. Smith "more in control of herself, less rageful, and less intense about the situation with her husband." (Plaintiff's Exhibit 27B, CT Page 8413-bs p. 6.) Dr. Colen also spoke to Ms. Smith's psychiatrist, Dr. Julianne Densen-Gerber, and her psychotherapist, Constance Lawrence, Ph.D. "Dr. Lawrence felt Mrs. Smith's "affective instability, impulsivity, anger, and shifting" were normal reactions to someone in her situation. Dr. Lawrence did not feel that these and other features of Mrs. Smith met the criteria for a personality disorder." (Plaintiff's Exhibit 27B, p. 6.) Dr. Densen-Gerber did not find significant psychopathology to warrant the use of psychotropic medication.

Dr. Colen testified that he works at the same clinic as Dr. Ramasami, who is a friend of Mr. Smith's. Dr. Colen admitted that he might have discussed the Smith case with Dr. Ramasami either before or during the evaluation, Taylor told Ms. Raider and his mother that Dr. Ramasami told him that he would be sorry if he didn't say he wanted to live with his father. Despite being the court-appointed evaluator, a neutral in the case, Dr. Colen met with Mr. Smith and Ms. Prior for fifty minutes on the Thursday prior to the trial. While Dr. Colen did call the GAL and AMC for an update, he failed to meet with Ms. Smith or Taylor prior to trial. Dr. Colen's last contact with the mother was February 7, 2002 and his last contact with Taylor was March 9, 2002.

Despite the fact that Dr. Colen was ordered by the court to perform psychological evaluations on the parties and minor child, his reports do address custody issues. The underlying basis of both reports prepared by Dr. Colen was that the wife and child were exaggerating their complaints about the husband. Dr. Colen admitted that if their complaints were accurate his conclusions would be flawed. Dr. Colen's observations did not reflect the behavior of the parties during trial, particularly during their respective testimony. Additionally, his meeting with Mr. Smith and Ms. Prior immediately prior to trial (without a similar meeting with Ms. Smith) and Mr. Smith's friendship with a colleague of Dr. Colen's (Dr. Ramasami, who tried to persuade Taylor to live with his father) all call into question the objectivity of the evaluator. The court

did not find Dr. Colen's reports persuasive in rendering a decision regarding custody and visitation. On the other hand, the report of the Family Relations Counselor was comprehensive, insightful, objective and impartial. The court's custody and access decision was therefore based on the Family Relation's evaluation, the testimony of the parties and witnesses, the wishes of the minor child and the recommendations of the AMC and GAL.

The parties called a number of witnesses to comment on their parenting abilities. Mr. Smith called his sister, Anna Smith; a former colleague, Sandye Mann; and his girlfriend, Cathy Prior. Mrs. Smith called Nadine Taylor-Barnes, Patricia Stout, Susan Valdez and Tracey Baines. CT Page 8413-bt

Anna Smith had relatively little contact with the Smith family since she lives in Ohio. Her only opportunity to observe the parents interact with Taylor was on visits to Ohio or her visits to Connecticut. She was aware that the marriage had problems from the start. The most significant portion of her testimony was the fact that she placed the blame on Ms. Smith for her failure to see Taylor during her trip to the northeast in August 2002. She was not aware that a capias had been issued for Mr. Smith's arrest and he could not enter the Connecticut without risking arrest. Anna Smith did not speak to Taylor or Ms. Smith during the August 2002 telephone call her brother claimed to have placed to them. Anna Smith admitted she had never sent her nephew a birthday card or birthday present. Additionally, despite her testimony that was replete with praise for Ms. Prior, Anna Smith never saw Taylor and Ms. Prior together.

Sandye Mann had not seen the Smith family in several years and it was evident from her testimony that she had a strong dislike of Ms. Smith. Her testimony was inappropriately aggressive at times, loudly continuing to answer questions that were the subject of objections, even after being instructed by the court to stop until an evidentiary ruling had been made. She did admit that she had given Mr. Smith *The Complete Kama Sutra* as a Christmas present in 1994, inscribed "David, Happy Holidays! I hope reading this brings you pleasure." It was apparent that this gift cooled the relationship between Ms. Mann and Ms. Smith. During the couple's separations in 1999 and 2001, Ms. Mann testified to fielding up to fifteen to twenty calls a day from Ms. Smith and Taylor. Ms. Mann testified that Ms. Smith used vulgar language and also claimed that she heard the defendant coaching Taylor during these telephone calls.

Cathy Prior testified on behalf of Mr. Smith. She was his landlord and claims to have become his girlfriend in July 2002. She is currently supporting Mr. Smith financially. Ms. Prior is well credentialed, having a BFA in Art, a BSW, MSW, Masters in Education, 6th year certificate, and is certified to teach K-12 and as a school social worker. She is currently employed in two positions with the Board of Cooperative Education Services in Yorktown Heights, NY, as a principal and a therapist. She has coached girl's lacrosse and ice hockey, acted as a spiritual advisor for AMAS and is active with the Prevention Convention and St. Mary's Youth.

Ms. Prior was divorced in November 2001 and has two children: a daughter who attends college and a seventeen-year old son. The son lives with his father, as does the daughter when she is home from college.

Ms. Prior has been very involved with Mr. Smith and Taylor since she became his landlord. When she went shopping on Saturdays she would pick CT Page 8413-bu them up lunch. Mr. Smith and Taylor enjoyed a vacation at Cape Cod and Saratoga, N.Y. with Ms. Prior at homes she owns in those locations. Ms. Prior claimed to have dressed Taylor for his first Communion in hand-me-down clothing from her son. She also testified to arranging a variety of activities for father and son including watching a meteor shower, helping Taylor with homework, allowing father and son to use her guest room for visits between

January and June 2002, and attending Taylor's piano recital, play and swim meets. In June 2002, she even had a piano moved into her home for Taylor to play. It was Ms. Prior's suggestion that she and Mr. Smith visited the public school he would have Taylor attend if he is awarded custody. Ms. Prior has no plans to work during the summer of 2003 in the event Mr. Smith is awarded custody of Taylor. Ms. Prior took over the cooking and laundry for Mr. Smith and his son when they spent weekends in her apartment

In July 2002, Ms. Prior spent time contacting lawyers to represent Mr. Smith. After the capias was issued, Mr. Smith and Ms. Prior met in New York City because he could not comply with the court's financial orders. Ms. Prior posted some of Mr. Smith's bail and has given him an estimated $5,000 — $10,000 to date. She has also allowed Mr. Smith the use of her credit card.

Despite the fact that she earns "in the high $90,000s" per year, Ms. Prior pays no child support to her former husband. It was clear from both Ms. Prior's, and Mr. Smith's, testimony that she is "enabling" him in many ways. She is currently supporting him financially and he has been unemployed since the end of October 2002. She literally takes care of Mr. Smith in many ways: preparing his food, doing his laundry and caring for his child, either directly or indirectly. She allegedly performed many of these activities even before they had a romantic relationship.

Nadine Taylor-Barnes testified on behalf of the defendant wife. She has known the Smith family since 1993 but moved to California in December 2000. She has returned to Connecticut on several occasions since December 2000 and socialized with Ms. Smith. Additionally, the women have maintained telephone contact since Ms. Taylor-Barnes move. Ms. Taylor-Barnes had ample opportunity to observe the mother and son interaction. Ms. Taylor-Barnes described Ms. Smith's relationship with Taylor as total devotion in every aspect of his development including social, emotional and intellectual. Ms. Smith's style of discipline was described as kind but firm. She described Ms. Smith as the primary caretaker of Taylor and indicated Mr. Smith was not around a lot.

Ms. Taylor-Barnes saw Mr. Smith interact with her son and Taylor on a vacation to Cape Cod, Massachusetts in August 1998. On the way to the CT Page 8413-bv beach, the children ran ahead of the adults and Ms. Smith and Ms. Taylor-Barnes were concerned because sand dunes obscured their view. The ladies screamed at Mr. Smith to catch up with the children. He appeared to be in no hurry and the women dropped their bundles and ran to the beach. Upon reaching the top of the stairs, Ms. Taylor-Barnes saw Mr. Smith grab her son Blake in a chokehold and scream at him "where is Taylor?" Mr. Smith's behavior was described as "out of control."

Patricia Stout, a co-worker of Mrs. Smith's from Capstone Mortgage, testified on her behalf. She has known the defendant since August 2001 and they share a workspace. Ms. Stout testified that Ms. Smith leaves work every weekday to pick Taylor up from school and has a desk and chair set up for him in the office. It was Ms. Smith's idea to set Taylor's workspace up and it includes a photograph of Father and Son. Ms. Stout has an eighteen-year old son, Christopher. In February 2002, before she met Mr. Smith, he called her son, then age 17, to see if he could pick Taylor up. Ms. Stout objected because her son had his driver's license for only one month at the time. After being informed that her son had been driving for only one month, Mr. Smith still did not feel it was inappropriate for him to transport Taylor. Approximately one month after Mr. Smith's telephone call Christopher flipped his car in an accident.

Ms. Stout testified that Taylor asked her to proof read a letter he was in the process of writing to his attorney. (AMC Exhibit 1.) Taylor told Ms. Stout he was writing the letter because no one cared what he wanted and he wanted Attorney Poll to read the letter to

the court. Additionally, in the last six months, Taylor has confided in Ms. Stout about the divorce. He said that his father doesn't come to visit when he is supposed to, no one listens to him (Taylor), and he has spent lonely weekends because his father couldn't decide when he was picking him up. On one Saturday, Taylor reported he canceled a play date only to have his father cancel the visitation.

Susan Valdez testified on behalf of the wife. She has known the Smith family since their boys attended Landmark Academy together. When Christopher Valdez and Taylor were approximately six years old, Mrs. Valdez asked Mr. Smith to watch the boys at the YMCA in Wilton while she went to the ladies room. She was concerned about her son's safety around the water and described him as a "natural sinker." When Mrs. Valdez returned from the ladies room she noticed that Mr. Smith had a newspaper in his face and could not observe what the boys were doing by the waterfront. The plaintiff, who was present some distance away, assured her that that he had kept an eye on Christopher while she was gone. The two women sat down to watch how long it took Mr. Smith to look up from his paper. The boys began to roughhouse and one was pinned under the CT Page 8413-bw water. The women ran towards the water screaming and Mr. Smith did not look up from his paper until Ms. Smith's shadow fell across his paper. On another occasion, Ms. Valdez bumped into Mr. Smith at the pediatrician's office. During their conversation Mr. Smith accused his wife of "faking an illness" to avoid taking Taylor to the doctor for a sick child visit. He also claimed that Taylor was not ill even though the child looked sick to Mrs. Valdez.

During the summer of 2001, Ms. Valdez saw Mr. Smith and Taylor in the Wilton YMCA. Mr. Smith went toward the pool and Taylor went to the pond area not covered by lifeguards. Ms. Valdez kept an eye on Taylor and made sure he had sunscreen. When the Valdez family was ready to leave she asked Taylor if he knew where his father was. Taylor explained he was supposed to meet him in the parking lot earlier. Taylor was obviously upset because he didn't know where his father was. Ms. Valdez calmed Taylor down and had the boys look for Mr. Smith's car and check the men's locker rooms. Mr. Smith appeared in the parking lot more than forty-five minutes late. The Wilton YMCA has a rule that children under thirteen years old are not to be left without adult supervision.

Tracey Baines testified that Taylor and her son Rory are good friends. She testified about an incident that occurred Thanksgiving 2001: plans had been made for Taylor to be dropped off for a play date at 1:00 p.m. Instead, Mr. Smith dropped Taylor off at 4:00 p.m. inappropriately dressed in shorts and flip-flop footwear. Ms. Baines expected Taylor to be picked up at 5:00 p.m. but Mr. Smith failed to arrive. She fed Taylor and beginning at 7:00 p.m. she began trying to reach Mr. Smith by telephone. Mr. Smith finally arrived between 9:00 p.m. and 10:00 p.m. claiming he had fallen asleep. Ms. Baines described Taylor as being upset when she was unable to reach Mr. Smith.

Taking all the credible testimony as a whole, it was clear to the court that Mr. Smith lacks the knowledge, commitment, ability to sacrifice, and confidence to be awarded sole custody. If the court awarded the father sole custody, it is clear that the task of parenting Taylor would at best be shared with Mr. Smith's significant other, and at worst totally controlled by Mr. Smith's significant other, because it appears that Mr. Smith would willingly abdicate the responsibility. The court finds no credible evidence that the mother is deliberately alienating the minor child from the father. The court concludes that the father's behavior, described in detail above, is the primary cause of the poor father/son relationship. The court also finds that both parents contributed to the communication of the details of the divorce to the child.

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When the couple purchased their home in Redding in 1993, Mr. Smith "borrowed" $60,000 from his parents

for a down payment. (Plaintiff's Exhibit 51.) However, his parents gave the couple a gift letter so they could qualify for a mortgage. (Defendant's Exhibit B-H.) During the couple's reconciliation in 2000, Mr. Smith managed to "pay" his parents back the $60,000 in full.

The defendant introduced a note hand written by the plaintiff (Defendant's Exhibit DS) indicating an intent NOT to report all of his income during the pendency of the 1999 divorce. The note indicates "Report BLB only as per 1998 Tax Return," "Nothing is official in 1999," "This year's other client income meaningless because not calculated, USE LAST YEAR 1998." Exhibit DT illustrates even more disturbing ramblings of the plaintiff and indicated that Mr. Smith was contemplating charging his Bahamian lawyer with a Human Rights violation — "drag his ass down to NYC-UN Building, Freeze CT funds in foreign banks, spending freeze in CT close court houses, ABUSE Judge's child like they abuse mine." Exhibit DV contains similar allegations of the plaintiffs in his own handwriting stating that, "The police abusing my son must stop by arresting me and assaulting my job must stop. Police attacks on my Ability to Support my Son the Failure of the State to protect me my son from abuse. MUST STOP. I will have the Branch Managers President Bavaria on the phone with the Governor of CT. BLB will boycott the STATE, seek to freeze 500M Funds for human rights abuse, UN sanctions Chinese Embassy, UN troops at my home." Further evidence of the Plaintiff's disturbed state of mind is evident in Exhibits D-X and E-A.

During the current dissolution, Mr. Smith claimed to have borrowed funds from a number of sources including his mother and a friend, Jack Francis. (Plaintiff's Exhibit 53.)

Mr. Smith was employed by BLB from 1995-October 2002. Mr. Smith testified that his job title was 1st or 2nd Assistant Vice President and later Vice President. His job duties included bidding on and trading municipal investment agreements for public entities. When his job terminated in the fall of 2002, his base salary was $134,000 (Defendant's Exhibits 60 61), plus a bonus for a total of $154,979.66. In 2002, he received a gross bonus of $30,000 for his performance in 2001. He received a gross bonus of $45,000 in 2001 for his 2000 performance and $30,000 — $35,000 in 2000 for his 1999 performance.

Mr. Smith elected to continue health insurance benefits for the family for eighteen months through COBRA after his termination from BLB on January 31, 2003. The first six months of coverage was paid by court CT Page 8413-by order from the proceeds of a 401k withdrawal.

Mr. Smith supplemented his BLB income by operating TradeSmith in 1997, initially as a sole proprietorship and, commencing in 2000, as a limited liability company. Mr. Smith testified that he discovered a pattern of trading called International Mutual Fund Timing Arbitrage. This strategy takes advantage of the fact that foreign markets are priced at 11:00 a.m. and the prices are stale by 4:00 p.m. when the US market closes. The International Mutual Fund Timing Arbitrage takes advantage of the foreign stale prices and the fact that the foreign market is correlated to the US market. The Defendant discovered this strategy by his own research in 1966 on the Bloomberg system. Mr. Smith claimed that for the strategy to work he had to make frequent trades and claimed that an SEC letter and mutual fund rules limiting trading and charging redemption fees eliminated the ability to make a profit by 2001. However, the court notes that Mr. Smith's contract with Aquila (Plaintiff's Exhibit 108) specifically references this method of trading. Mr. Smith was unable to explain why his contract with Aquila would make a reference to Mutual Fund Timing Arbitrage if it is no longer profitable.

The plaintiff's first client was a friend, Jack Francis. Mr. Smith initially traded his own and Mr. Francis' 401k account using a limited power of attorney. Mr.

Smith testified his TradeSmith compensation was 10% of profits over and above an original 2.5% and later a 3.5% hurdle. He was required to meet the hurdle before being entitled to any compensation and was entitled to the 3.5% above the hurdle. He charged clients on a quarterly basis by sending them an e-mail. On the 401K accounts Mr. Smith managed, he was paid by check; on personal accounts, he could be paid by check or wire transfer into his or TradeSmith's Wall Street Brokerage account. In March 1999, Mr. Smith began trading the following accounts personally:

1. IRA account for Frank Carlton with $600,000 to $1.2 million (10% fee structure);

2. 401k account for Charlene Maniatis with a balance of $400,000 (10% fee structure);

3. Lancaster Fund, precursor to the Churchill Fund, an off-shore international business corporation (IBC). Churchill was a $3 million account (15% fee structure with no hurdle). Churchill was eventually placed in receivership by the Bahamian government. Lancaster and Churchill were entities created by Ian Renert, cur- rently under investigation by the SEC); CT Page 8413-cz

4. Jack Francis 401K ($2 million);

5. Francis Trust ($600,000); and

6. Jack Francis Personal account (empty by 2001).

Mr. Smith had a limited power of attorney for TradeSmith's clients including:

1. Ralph Lim (401k account with $200,000-300,000);

2. Paul Littell ($400,000, 20% no hurdle);

3. John Lang ($2 million, 1% management fee, 2.5% hurdle, 20% profit above high water mark);

4. Bernier Account;

5. World Mark account (value $1 million at the start, 1% management fee, 20% profits above high water mark);

6. Mozart account; and

7. KFA Fund (an Ian Renert vehicle)

The Plaintiff estimated he earned the following amounts from TradeSmith:

a. Jack Francis 401k and personal accounts: Plaintiff made $1.6 million and estimated he was paid a total of
$150,000 between 1998-02;

b. Francis Trust: Plaintiff estimates he increased this account from $600,000 to $750,000. He claims to have been paid $15,000;

c. Carton: beginning balance $600,000 and high water mark $1.3 million. The plaintiff was paid roughly
$20,000 per year or a total of $50,000;

d. Maniatis: this account increased from $400,000 to $425,000 and the plaintiff earned $5,000;

e. Churchill Fund: Mr. Smith testified he was paid $400,000 in 1999;

f Lim: initial investment of $300,000 increased to $325,000 plaintiff CT Page 8413-ca earned $5,000;

g. Mozart Fund: Plaintiff earned $21,000;

h. Littell: Plaintiff earned $10-20,000;

i. Bernier/Lang: Plaintiff earned $20,000;

j. World Mark: Mr. Smith testified he earned $5,000; and

k. Lancaster Fund: Plaintiff testified he earned approximately $36,000.

The plaintiff's own testimony indicated that he earned an additional $717,000 to $727,000 between 1998 and

2001. If a TradeSmith client had an account at Wall Street Discount, Mr. Smith would be paid his fees by an internal transfer to his or TradeSmith's Wall Street Discount accounts.

Mr. Smith was unable to offer any rational explanation as to what happened to this money. He claimed that the family was living beyond his salary and this money funded their lifestyle. However, he offered no proof of lavish spending before the beginning of the divorce that would account for this amount of money. Additionally, at the same time Mr. Smith was earning substantial money from TradeSmith the couple refinanced their home and added $60,000 to the mortgage principal to pay off high interest credit-card balances.

The court carefully examined the plaintiff's tax returns for the years he was operating TradeSmith. In 1997, his Schedule C shows $1,300 in gross receipts. (Defendant's Exhibit A.) In 1998, Mr. Smith's Schedule C shows $18,645.00 in gross receipts (Defendant's Exhibit B). In 1999, the plaintiff's Schedule C shows $132,541.00 in gross receipts from TradeSmith. In the plaintiff's 2000 tax return (filed in 2003 as married, filing separately), reports $198,225 in gross business receipts. In 2001, also filed married filing separately in 2003, he reported $53,000 in gross receipts from TradeSmith. Mr. Smith testified he earned $5,000 in gross receipts from TradeSmith in 2002. In total, before deducting business expenses, the plaintiff reported $408,711.00 to the IRS in gross business receipts while testifying at trial that he earned between $717,000 to $727,000. It appears to the court that the husband failed to report approximately $308,000 to $318,000 in gross receipts to the IRS. The court was offered no evidence as to the whereabouts of these unaccounted for monies.

Mr. Smith's friend, Jack Francis, testified about the international CT Page 8413-cb arbitrage Mr. Smith performed for his accounts and also testified that the trading method is no longer viable. He estimated that he paid the plaintiff commissions in the range of $150,000 — $160,000 over the period of time the plaintiff traded his accounts. Mr. Francis testified that he made two undocumented loans to the plaintiff. The first was for $29,000 in October 2001 and the second in March 2002 for $3,500. Mr. Francis admitted the loans carry no interest, have no due date and are not in writing. Mr. Francis did prepare a letter regarding the loans in October 2002 when the plaintiff was incarcerated. (Plaintiff's Exhibit 53.) He admitted to feeling "a little beholden" to Mr. Smith as a result of all the money he made for him but claimed his checkbook was not open to the plaintiff. Mr. Francis had no idea that the plaintiff was nearly $500,000 in debt or that he had consulted a bankruptcy attorney. During the hearing before Judge White in July 2002 the plaintiff testified that he received $20,000 from Mr. Francis as a gift. When questioned about the discrepancy in his testimony, Mr. Smith claimed he wasn't sure if the initial money was a loan or a gift and could offer no explanation for the difference in amounts.

Mr. Smith's initial financial affidavit filed in connection with this action, dated 6/13/01, lists liabilities of $56,600.00. (Defendant's Exhibit N.) The plaintiff's financial affidavit filed at the time of trial lists almost $500,000 in debt, a substantial increase in two years. In early 2001, Mr. Smith appeared to be on a frenzied mission to rapidly increase his debt while at the same time failing to pay his bills. Mr. Smith claimed that the debt was incurred due to the unreasonable court-ordered support. He also claimed that he used credit-card cash advances to pay his support. However, he offered no evidence of cash advances used to pay support.

Mr. Smith violated the automatic orders by increasing his liability ten fold without court permission. The plaintiff made an unauthorized loan in the amount of $30,000 in May 2001 after this action was commenced. Additionally, Mr. Smith withdrew $20,000 from his 401K in February 2001 (Defendant's Exhibit CM) and misapplied the proceeds from a court authorized $9,000 withdrawal in July 2002. The withdrawal

had been permitted by the court to pay the retainer of the Attorney for the Minor Child. Instead, Mr. Smith unilaterally decided to pay his wife $7,500 towards his support arrearage and retained $1,500 for his personal use.

Despite the fact that Mr. Smith claimed his trading strategy no longer worked after 2001 his personal 401k continued to grow from $638,831 on 9/21/01 to $1,026,386.15 on 7/16/02. (Defendant's Exhibits DA, CZ, CV, CL, CS, CP and CU.) At the same time Mr. Smith increased his 401k by $400,000, his debt was increased by the same amount. Despite the fact CT Page 8413-cc that Mr. Smith substantially increased his own 401k from 2001-02, he claimed it would be illogical for the court to conclude he could do the same for his clients' accounts. The plaintiff claimed that he only received $5,000 in income from TradeSmith in 2002. The court does not find this testimony credible.

Defendant's Exhibit CJ is a copy of Mr. Smith's TradeSmith LLC's Wall Street Discount brokerage account statement showing a balance of $144,639.00 as of 9/29/00. Mr. Smith claimed this money was used to pay his parents back the $60,000 "gift" for the down payment on the family home and for family expenses because the family was living beyond his salary from BLB and TradeSmith income. However, Mr. Smith failed to produce any documentation to prove this claim after repeated requests for disclosure from the defendant and a court order during the trial. The credit card statements were either not produced or contained large gaps of time. The credit card information that was available clearly demonstrated that Mr. Smith was the big spender in the family. The same month the electricity was turned off at the family home, the plaintiff spent $300 at Mario Beducci Skin Care Salon for massages. Exhibit EF is an AMEX statement for May 2001 with a charge of $752.60 for a watch Mr. Smith testified he purchased for his son because he was Henry Ford in a school play and needed it as a prop. Defendant's Exhibit EG, VISA credit card statements; shows that the plaintiff spent $1,375 on clothing for himself.

Mr. Smith produced incomplete documentation of his AMEX credit card charges, only a portion of his BMW charge card statements, and only two Saks statements. The Discover card statements contained large gaps as did the CHOICE credit card, US Bank credit card and MBNA credit card. Additionally, Mr. Smith failed to produce complete documentation of his Wall Street Discount accounts in his name and TradeSmith's name. He also failed to produce any business records for TradeSmith to verify that the business expense deductions were legitimate or if he was running his personal expenses through the company. The plaintiff claimed he turned over all the documents he had but made no effort to secure the missing documents from the respective sources. The court finds that Mr. Smith deliberately concealed this information from his wife and her counsel, making it impossible to track his TradeSmith income and expenses and his credit card spending. The court therefore finds that all the credit card debt listed on the plaintiff's financial affidavit is solely his debt.

The court file is replete with Motions for Contempt for Mr. Smith's failure to pay the unallocated support ordered on September 25, 2001. As previously noted, Mr. Smith was incarcerated in October 2002 for failure to pay court-ordered support. Mr. Smith admitted at trial that he had CT Page 8413-cd failed to pay any support since the end of January 2003 when an arrearage payment was made via a 401k withdrawal.

Mr. Smith admitted he had consulted with a bankruptcy attorney and believed that 401k funds were generally protected from bankruptcy.

Mr. Smith demonstrated his knowledge of the Automatic Orders when he testified that the defendant withheld visitation from him in violation of the automatic orders. In addition he sent his father an e-mail (Defendant's Exhibit AP) telling him that it would be easier to pay the debt he owes him when no divorce is

pending due to the automatic orders. His repeated violations of the automatic orders are more reprehensible given his knowledge of the orders.

Mrs. Smith testified that during the latter part of the marriage her husband convinced her to transfer balances from his high interest credit cards to cards in her name alone with an initially lower interest rate. It is clear to the court that the plaintiff used the alleged reconciliation period from the 1999 divorce to the 2001 action to his financial advantage. The plaintiff utilized his financial skills to deplete and siphon marital assets and substantially increase the debt.

Mr. Smith hired a law firm, Seward and Kissel, to prepare the documents for a hedge fund named Grand Acacia Capital Management Ltd. (Defendant's Exhibit CD.) It was to be a Delaware corporation located in the Grand Cayman Islands to operate as an off-shore hedge fund. Defendant's Exhibit CE is an invoice for the preparation of the documents and shows a $10,000 retainer paid and a $5,000 balance due. Mr. Smith insisted that the Grand Acacia fund was never established.

Additionally, Mr. Smith met with a consultant from the Bahamas for advisory services in setting up an international business corporation as a trade vehicle, for a foreign entity. (Defendant's Exhibit DI.) The Plaintiff claimed he was interested in creating a trading vehicle in the Bahamas in the event the Churchill Group came out of receivership and started trading again. Mr. Smith identified Defendant's Exhibit AQ as account forms completed by Ian Renert or Nancy Lake for the KFP fund. Curiously, the user name for the account was Divorce I and Divorce 2. Mr. Smith claimed that Ian Renert chose the names despite the fact that he (Renert) was not going through a divorce. Defendant's Exhibit AX is an e-mail the plaintiff received from Mr. Renert providing advice on how to set up an offshore bank account.

The Plaintiff denied that he held money in off-shore accounts despite the evidence above. He admitted that he had conversations with Ian Renert CT Page 8413-ce about establishing off-shore accounts and trusts but claimed he never followed Renert's suggestions.

The court finds that the plaintiff's testimony regarding his employment was deliberately misleading and incomplete. The court finds that the plaintiff has demonstrated an earning capacity in excess of $150,000 and has based the award of alimony, child support and property settlement on that earning capacity.

The court also finds that the plaintiff deliberately and intentionally disposed of marital assets just prior to and during the pendency of this action. The plaintiff has failed to account for the income, testified to under oath, that he earned from his TradeSmith LLC. There is a $300,000+ discrepancy between his testimony and what was reported to the IRS on his income tax returns. The plaintiff failed to comply with the legitimate requests for production of documents by the defendant in an attempt to conceal his true income, assets and expenditures. During the course of this action, the plaintiff increased his debt from $50,000+ to almost $500,000 in two years. At the same time the plaintiff was spending money lavishly, he repeatedly failed to pay unallocated support and alimony. As a result, sums were removed from his 401k to support his wife and child. The plaintiff violated the automatic orders by withdrawing and taking loans from his 401k account without court approval or the consent of the defendant.

The plaintiff's attempts to mislead the court during all of his testimony (both on custody issues and financial issues) unnecessarily prolonged the trial and substantially added to the legal fees in this matter.

The court is convinced that the plaintiff's claim for sole custody was not made in good faith but was merely an attempt to save money on child support and tuition. At no point in the proceedings did *any* professional (Dr. Colen, Dr. Cohen or Leslie Raider) recom-

mend that the plaintiff have sole custody of the minor child. It should have been clear to the plaintiff well before trial that his quest for sole custody would be unsuccessful. It is clear to the court that the plaintiff is barely capable of taking care of himself and certainly not capable of raising a child alone. Finally, the conduct and testimony of the plaintiff during the course of these proceedings did not demonstrate he has the moral character fit to raise a child. However, he is Taylor's father and the child desperately needs him in his life. It is the hope of the court that Mr. Smith will step up to the plate and take on the responsibilities of being a father. That means, in simple terms, that he must be physically and mentally present during his visitation with his son. He must focus on CT Page 8413-cf the child's needs and not his own. He must learn basic parenting skills so that the child is picked up on time, fed and entertained in an age-appropriate manner. In essence, he needs to begin behaving like a responsible adult and parent.

The court finds that the behavior of the plaintiff as described in detail above was the cause for the breakdown of the marriage.

ORDERS

After considering all of the statutory criteria set forth in General Statutes § 46b-84 as to support of a minor child, § 46b-215a-1 et seq., Regs. Conn. State Agencies, as to child support, § 46b-62 as to counsel fees, § 46b-66a, as to conveyance of real property, § 46b-81, as to assignment of property and transfer of title, § 46b-82, as to the award of alimony, § 46b-84, as to medical insurance for minor child, together with applicable case law and the evidence presented here, the court hereby enters the following orders:

1. *DISSOLUTION OF MARRIAGE*:

A decree dissolving the marriage, on the grounds of irretrievable breakdown, shall enter on July 15, 2003.

2. *CUSTODY*:

The defendant mother shall have sole custody of the minor child, Taylor Smith, subject to the plaintiff father's rights of visitation as set forth below. The defendant mother shall be responsible for decisions on major custodial issues such as those concerning the health, education, and religion of the minor child. The mother shall inform the father in writing, by fax or e-mail, of all such decisions in a timely manner. Both parents shall be entitled access to records concerning the minor child, including but not limited to health and educational records.

3. *VISITATION*:

Plaintiff father shall have no overnight visitation with the minor child at this time. The father shall have visitation with the minor child on Tuesday evenings each week from 6:30 p.m. until 8:30 p.m., during which time the father shall provide the minor child with an appropriate dinner,

The father shall also have visitation with the minor child on alternate weekends on Saturdays from 11:00 a.m. until 5:00 p.m. If the minor child CT Page 8413-cg is involved in a swim meet that begins at or before 11:00 a.m. on any such Saturday, the mother shall transport the child to the swim meet and the father's visitation shall begin upon completion of the child's participation in the meet. The parties shall be reasonable and flexible in adjusting the days and times of the father's visitation in order to accommodate the child's extracurricular activities, birthday parties, and play dates with friends.

The minor child shall spend holidays and vacations with the mother, except that the father shall have visitation with the minor child on Father's Day from 11:00 a.m. to 5:00 p.m. as well as some time on both the father's birthday and the birthday of the minor child.

The plaintiff father's visitation shall not include any friends of the father unrelated to the minor child until further order of the Court or written agreement of the

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parties, as the minor child is not comfortable being in this situation at this time in his life.

All communication between the parents regarding the minor child shall be via facsimile or e-mail until further order of the court or written agreement of the parties.

The father shall notify the mother at least two days before any visitation time by fax or e-mail if he will be unable to visit with the minor child. The father shall at all times pick up and drop off the minor child for visitation at either the child's place of extra-curricular activity (such as swimming) or at the mother's home, with such place to be designated by the mother based upon the child's schedule. Such shall be provided to the father in writing by fax or e-mail at least one day prior to the visitation, except in the case of an emergency such as illness of the child. Under no circumstances shall the minor child be required to wait in any location other than the mother's home for more than fifteen minutes if the father is late. If the father is more than fifteen minutes late, the visitation shall be canceled and no make up visitation shall be required.

The mother shall provide the father with notice of all school events and extracurricular activities involving the minor child, and the father shall be entitled to attend these and other public and major functions involving the minor child (unaccompanied by a person unrelated to the minor child). If there are any tickets for any such event, these shall be shared equally between the parties, with each paying any cost for his/her own ticket (s).

The father shall be entitled to reasonable telephone contact with the CT Page 8413-ch minor child (one call per day) but not later than 8:00 p.m. on each non-visitation day.

All arrangements for visitation shall be made directly between the parties by fax or by e-mail and shall not involve the minor child.

At no time shall the father's visitation with the minor child take place at the mother's residence unless the parties specifically agree that this would be in the best interest of the minor child.

In the event the mother agrees to visitation in the family home, the father shall not bring any third parties or animals into the home. If the father is providing a meal for the minor child, he shall place the garbage in a trash receptacle or bring it to his car for later off-premises disposal.

Each party shall keep the other reasonably informed of the whereabouts of the minor child while in his/her care. In the event of an illness or personal injury to the minor child, the first party to learn of such illness or injury shall notify the other immediately. The word "illness" shall mean any sickness or ailment that requires the services of a physician. The word "injury" shall mean any injury that requires the services of a physician. During any illness or injury, the father shall have the right of reasonable visitation to see the child if the child is ill during his regular visitation time.

The parties shall be flexible in arranging visitation in order to promote the best interests of the minor child. In matters concerning visitation, each party shall endeavor to further the best interests of the minor child and facilitate close ties between the minor child and the other party. Neither party shall arbitrarily hinder nor interfere with the relationship of the minor child with the other party, and each party shall contact the other to discuss the visitation arrangements with as much advance notice as is reasonably practicable.

Each party shall exert every reasonable effort to maintain free access and unhampered contact between the minor child and the other party. Neither party shall do anything which may estrange the minor child from the other party or which may hamper the free and natural development of the minor child's love and respect for the other party.

Each party shall be entitled to all information from any physician, dentist, consultant or specialist attending the minor child, and to be furnished with copies of all reports given by such professionals. Each party shall further be entitled to all information from any teacher or CT Page 8413-ci school giving instruction to the minor child, and to be furnished with copies of all reports and documents (which shall also include notices of parent meetings, school performances, extra-curricular activities and the like) given by such teacher (s) or school (s). Each of the parties will furnish the other copies of any reports in the possession of the party, from such third persons or institutions concerning health, education, or welfare of the child.

Each party shall keep the other informed in writing of his/her place of residence, place of employment and telephone numbers within twenty-four (24) hours of any change during the minority of their child. The mother shall notify the father, in writing and by certified mail (return receipt requested), of her intention to move the residence of the minor child more than fifty (50) miles from its current location. Said notice shall be given not less than ninety (90) days prior to said intended move.

The father shall not remove the minor child from the State of Connecticut without first informing the mother, by fax or e-mail, as to the destination address and a working telephone number for emergency access.

4. *CHILD SUPPORT*:

The court finds that the plaintiff has a demonstrated earning capacity well in excess of $150,000 per year. The court has based the computation of the child-support guidelines based on the plaintiff having an earning capacity of $150,000 per year. The plaintiff shall pay child support to the defendant in the amount of $325.00 per week in accordance with the Connecticut Child Support Guidelines. This shall be paid by an immediate wage withholding order. The plaintiff shall also contribute to the child's additional support as set forth in paragraphs 5, 6 and 11 hereunder.

5. *PRIVATE SCHOOL AND POST-HIGH SCHOOL EDU- CATION*:

The court finds it is in the best interest of the minor child for him to continue to attend the Ridgefield Academy. The parties shall continue to enroll the minor child in Ridgefield Academy through his graduation from said school or until such time as the mother no longer believes that this educational institution is the appropriate one for the minor child. The plaintiff shall pay the sum of $200.00 per week for tuition and costs. The plaintiff shall make the 2003-04 tuition payment in a lump sum amount of $10,400.00 from his share of the 401K as soon as the account can be divided by QDRO and the plaintiff's 30% share liquidated (see paragraph 11 below). The plaintiff's child-support payments shall CT Page 8413-cj immediately reflect an additional $200.00 per week for tuition so that the money is available when the tuition deposit and final bill have to be paid. At such time as the minor child graduates from Ridgefield Academy, or the mother believes another educational institution would be appropriate, the parties shall each be responsible and pay for one-half the tuition and costs of any such institution. The Court hereby retains jurisdiction to determine at a later date an educational support order (Public Act No. 02-128) upon motion made by either party at the appropriate time in the future.

Any and all custodial accounts, presently being held on behalf of the minor child, shall be maintained in accordance with the laws of the State of Connecticut and shall not be used for the support of the minor child. Said accounts shall be reserved for future use for tuition, room, board, and the like in conjunction with said aforementioned educational support order. Unless specifically agreed to in writing by the parties or ordered by the Court, no part of these accounts shall be used for tuition or costs of extracurricular activities of the child prior to such time as the Court enters

an educational support order. The father shall provide the mother with a copy of all statements received for each such account within two weeks of his receipt of same.

6. *MEDICAL INSURANCE*:

The cost of maintaining the existing COBRA medical insurance coverage for the defendant and minor child shall be paid from the 401k distribution set forth in paragraph 11 below. Thereafter, the plaintiff shall maintain medical insurance for the benefit of the minor child; all unreimbursed medical, dental (including orthodontia), psychiatric/psychological/therapeutic, prescriptive, optical expenses, including insurance premiums and deductibles, incurred on behalf of the minor child shall be paid one-third by the defendant and two-thirds by the plaintiff, until the child attains the age of twenty-three years. The provisions of CONN. GEN. STAT. Sec. 46b-84(e) shall apply.

7. *MISCELLANEOUS*:

A. Robert Colen, Ph.D., issued two comprehensive psychological evaluation reports. Additionally, Family Relations counselor, Ms. Leslie Raider, issued a com- prehensive custody study report. At no time presently or in the future shall any of these reports be copied, nor the contents published, by any person having a copy of any such report. At no time presently or in the future are the contents of said reports to be discussed with or in any way communicated to the minor child by either party or by any person having a copy of any such report. Neither party is CT Page 8413-ck to re- ceive a copy of any such report, presently or in the fu- ture.

Furthermore, at no time presently or in the future shall either party discuss or in any other way transmit any of the testimony in the trial of this case, or any substance thereof, to the minor child, other than the court's final specific orders concerning custody and visitation. The parties shall not discuss the court orders concerning finances and other matters other than custody and visitation with the minor child, nor shall the child be given a copy of any trial transcript, the court's opinion, and/or any orders.

These orders concerning the aforementioned reports, testimony, and court orders shall be modifiable only by court order.

B. The court finds it is in the best interest of the minor child that the plaintiff father undergo a com- plete psychiatric evaluation, including but not limited to an evaluation for medication within sixty (60) days of the date of these orders. The purpose of this order is to enable the father to obtain the appropriate psychi- atric/psychological treatment and medication as rec- ommended at trial by Dr. Colen and the guardian ad litem, Dr. Cohen. The plaintiff shall comply with any recommendations concerning medication and/or par- ticipation in regular therapy thereafter.

C. The mother shall continue in regular therapy with her current therapist, Dr. Lawrence.

D. The minor child shall continue in therapy with Dr. Arndt for as long as his therapist deems it necessary for him to do so.

E. The plaintiff shall be solely responsible for the fees and costs incurred by the counsel for the minor child and the guardian ad litem; said fees and costs shall be paid by him pursuant to paragraph 11 below not later than 60 (sixty) days from the date of this order.

8. *ALIMONY*:

The plaintiff shall pay the defendant $350 per week until the death of either party, the defendant's remarriage, or ten years from the date of this judgment, whichever first occurs. This shall be paid by an immediate wage withholding order.

9. *LIFE INSURANCE*:

The plaintiff shall apply for life insurance, insuring his life in the CT Page 8413-cl amount of FIVE HUNDRED THOUSAND and 00/100 ($500,000.00) DOL-

LARS, for so long as he has an obligation to pay alimony, child support, or college education expenses. The plaintiff shall pay the premiums. He shall secure such insurance that a premium payment of $1,000.00 per year would secure for a term policy of fifteen (15) years. His obligation to pay the premiums shall endure so long as the plaintiff is obligated to pay alimony, child support, or college expenses. In the event he fails to pay any of said premiums, the defendant shall have the option to pay such premiums and the plaintiff shall be indebted to repay the defendant in the amount of the sums so paid. If the defendant pays any such premiums in accordance with the provisions of this paragraph, then the plaintiff shall reimburse the defendant in the amount so paid on or before the first day of the first month following any such payment. In the event that said insurance shall not be maintained in effect at the time of the plaintiff's death, and in the event the plaintiff has not made an equivalent bequest in his will which can be paid from the assets of his estate to the defendant for $500,000.00, then the difference between the bequest and the amount of insurance required under the terms of this paragraph shall constitute a charge upon the plaintiff's estate and an indebtedness of the estate of the plaintiff in favor of the defendant to the extent of the provisions of this paragraph. The plaintiff shall furnish to the defendant, per her request, but no more than twice annually, on the first business day in January and on the first business day in July, proof that he is insured in the specified amount and that the beneficiary of said insurance is as required herein.

10. *REAL ESTATE*:

By judicial decree, the plaintiff's interest in the Redding property shall be transferred to the defendant, and she shall be responsible for the first mortgage. She shall hold the plaintiff harmless and indemnified of the same. The defendant shall be responsible for recording a certified copy of the dissolution of marriage judgment on the Redding Land Records.

11. *401K*:

The plaintiff's remaining 401K balance held by the plan, and that portion held by Attorney Poll as trustee, shall be divided such that the defendant receives 50% and the plaintiff receives 50% (30% outright and 20% set aside as security pursuant to CONN. GEN. STAT. Section 46b-84 (f) for the plaintiff's faithful performance of his obligations under the decree entered in this matter).

The following distributions were previously withdrawn from the CT Page 8413-cm husband's 401K: $130,000 for the primary benefit of the plaintiff to secure compliance with the existing court orders in this matter; $8,600 allocated for payment of COBRA medical insurance; $20,000 paid to Attorney Poll; $8,000 paid to Dr. Cohen; $900 paid to Attorney Grover based upon a finding of contempt; $41,665.66 paid to the defendant based on a contempt finding as past due alimony and child support; and $26,000 paid for the plaintiff's taxes.

Further, the plaintiff has borrowed against the 401K in the amount of $50,000. He has also paid his mother $60,000, all without court order.

The following sums shall be paid from the plaintiff's 30% outright distribution share:

a. $75,000 towards the defendant's legal fees; $50,000 for the legal fees of Attorney Grover for the trial of this case and the balance for sums due and owing to Attorney Pasquini. The plaintiff is ordered to pay this amount due to his repeated contempt of court, the to- tal lack of credibility of his testimony regarding the couple's finances, his manipulation of family assets to put them beyond the reach of the court, his repeated failures to comply with requests for the production of financial documents, and his deliberate and intention- al violation of the automatic orders that prohibit the creation of debt during the course of dissolution pro- ceedings.

b. Any sums due and owing the defendant as pendente lite unallocated alimony and child support, which the court finds to be $58,746.22 as of July 15, 2003.

c. The sum of $65,500, due and owing the Attorney for the Minor Child, Susan Poll. The court finds the fees charged by Attorney Poll to be reasonable and necessary. The plaintiff is ordered to pay the full amount because of his repeated contempt of court orders, the total lack of credibility of his testimony regarding the couple's finances, his manipulation of family assets to put them beyond the reach of the court, his repeated failures to comply with requests for the production of financial documents and his delib- erate and intentional violation of the automatic orders that prohibit the creation of debt during the course of dissolution proceedings.

d. The sum of $35,000 for the services of the guardian ad litem, Donald Cohen, Ph.D. The court finds this amount to be the reasonable and necessary charge for his services. The court finds that the GAL's unilateral increase in his hourly rate from $200.00 to $300.00 per hour during the trial of this matter to be an un- reasonable hourly rate for his CT Page 8413-cn ser- vices. Dr. Cohen also charged eleven hours per trial day even on occasions the matter adjourned early. Ad- ditionally, this case was the first for Dr. Cohen as a GAL and the court finds it unreasonable to impose the full cost, of his learning the functions of a guardian ad item, on the parties.

e. A sum representing the balance of the cost of COBRA insurance coverage, for the maximum period al- lowed by law, shall be paid to the plaintiff's former employer to assure continued medical insurance cov- erage for the wife and minor child.

f. The sum of $10,400.00 shall be paid to the Ridgefield Academy for the minor child's 2003-04 tuition. If the defendant has already made this payment, this sum shall be paid directly to the defendant as reimburse- ment.

g. The sum of $2,000.00 shall be paid to Dr. Arndt for services rendered to the minor child; such payment emanating from a pendente lite order of the court.

A Qualified Domestic Relations Order shall be established so that the wife shall receive 50% of the remaining 401K, together with that portion of the plaintiff's 30% share as set forth above, including gains and losses on that sum until transfer. This court shall continue its jurisdiction for the purpose of effectuating the terms of this order. The cost of an actuary to prepare the Qualified Domestic Relations Order shall be equally divided between the parties. Each party shall direct their attorney to cooperate in the timely processing of the Qualified Domestic Relations Order and each party shall be individually responsible for their counsel fees incurred to finalize the Qualified Domestic Relations Order. The parties shall equally share the cost of the pension actuary, Mr. Barry Kaplan, and each shall initially tender to him the sum of $250.00 to commence his investigation.

The remaining balance of the plaintiff's share of the 401K shall be held as security for the plaintiff's faithful compliance with the court orders. That balance shall be rolled into a separate IRA to be held for his benefit and to secure compliance with the court orders, by a trustee appointed by the court, and shall be released to him when the minor child attains the age of 23 years, so long as no sums are due and owing under the provisions of the judgment in this matter. In the event a court utilizes these funds for the purpose of satisfying compliance with court orders, then the trustee shall be authorized to act as directed by the court regarding the distribution of the IRA security monies. The plaintiff may participate in any advice, required by the trustee, CT Page 8413-co regarding the investment of these funds.

12. *PENSION*:

The defendant shall be entitled to one-half of the value of the plaintiff's defined benefit plan through his prior employment. A Qualified Domestic Relations Order

(s) or Domestic Relations Order (s), as the case may be, shall be established so that the defendant shall receive 50% of such benefits as of the date of judgment, which shall be transferred to the defendant. This court shall retain jurisdiction for the purpose of effectuating the terms of this clause. The parties shall equally share the cost of the consultant, Mr. Barry Kaplan and each shall initially tender to him the sum of $250.00 to commence his investigation of the plan. Each party shall cooperate in the timely processing of the Qualified Domestic Relations Order (s) or Domestic Relations Order (s) and each party shall be individually responsible for their counsel fees incurred to finalize the Qualified Domestic Relations Order (s) or Domestic Relations Order (s).

13. *DEBTS*:

The defendant shall be responsible only for those liabilities as reflected on her financial affidavit in her name solely. The plaintiff shall be responsible for all debts on his financial affidavit, as well as all debts in his name for which he could be liable, which are not yet reflected as debts on his financial affidavit, particularly those pertaining to taxes. The plaintiff shall hold the defendant indemnified and harmless for the debts the court has ordered him liable. This provision is in lieu of additional spousal support and is intended to be nondischargeable in bankruptcy.

14. *CUSTODIAL ACCOUNTS*:

The defendant mother, as the sole custodian, shall hold the child's custodial accounts with CHET, Schwab, and any others. The plaintiff shall transfer the same to the defendant's control within thirty (30) days of the judgment in this matter. The defendant shall provide the plaintiff with an annual accounting of the funds.

15. *PERSONAL PROPERTY*:

The parties have previously divided their household furnishings and vehicles and each shall retain in their personal possession that which they now have under their control. CT Page 8413-cp

16. *DISCLOSURE*:

The reports of Leslie Raider and Dr. Robert Colen shall not be copied, disseminated, distributed or published in any manner, and the pendente lite orders pertaining to these reports shall survive the entry of the judgment in this case.

17. *DEFENDANT'S OUTSTANDING MOTION*:

The Defendant's Motion for Contempt, filed April 22, 2003, #221, is granted in part as follows:

a. The court finds the plaintiff in willful contempt of the court orders dated January 21, 2003, requiring the plaintiff to install a telephone in the family home for the use of the minor child. Despite taking a European vacation and contributing to the household expenses of his current girlfriend, the plaintiff failed to have a telephone line installed for his son.

b. The court finds the plaintiff in willful contempt of the court orders dated July 15, 2002, regarding visita- tion with the minor child. Testimony at trial proved that the plaintiff has been inconsistent in the exercise of his visitation rights and has arrived late to visita- tions. The plaintiff's failure to take advantage of the visitation granted him makes the veracity of his claim for sole custody questionable.

c. The court finds the plaintiff in willful contempt of the court orders dated September 25, 2001, ordering him to pay the sum of $2,500.00 per week as unal- located support. The plaintiff has failed to pay any court-ordered support since January 21, 2003. The court notes that the $41,665.66 paid towards the plaintiff's unallocated support was derived from a withdrawal from his 401k account and not from his income. Under the terms of his severance package, the plaintiff received his full salary until the end of Jan- uary 2003 and thereafter received $405.00 per week

in unemployment compensation. Despite this income, the plaintiff made no contribution towards the support of his wife and child.

d. The court denies that portion of the defendant's motion referring to the plaintiff's failure to apply for unemployment benefits; the evidence at trial proved that he had applied for and received unemployment compensation.

18. *PLAINTIFF'S OUTSTANDING MOTION*:

The plaintiff's Motion for Modification, #208, dated December 5, 2002, CT Page 8413-cq is denied. The plaintiff received full salary as part of his severance package from the end of October 2002 until the end of January 2003. The plaintiff failed to introduce any evidence that he was placed on leave without pay during the period of incarceration from October 10, 2002 to October 21, 2002. The plaintiff's willful failure to pay court-ordered support caused his incarceration and, as testified to by the plaintiff, his eventual termination of employment. The plaintiff failed to introduce testimony or evidence at trial to prove he had made a good-faith effort to find new employment. The court does not find the plaintiff's testimony regarding his efforts at a job search credible. Additionally the plaintiff's testimony at trial was deliberately evasive and incomplete about the terms of his compensation for his new employment.

19. *AUTOMATIC STAY*:

The court terminates the automatic stay pursuant to P.B. Section 61-11(d) in the event of an appeal by either party. The court is making this order due to the precarious state of the wife and minor child's financial condition and the knowledge that the plaintiff has violated the automatic orders and numerous prior court orders.

By the Court,

Holly Abery-Wetstone, Judge CT Page 8413-ca

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